

1 Richard A. Hoyer (SBN 151931)  
2 David C. Lipps (SBN 269933)  
HOYER & ASSOCIATES  
240 Stockton Street, 9th Floor  
3 San Francisco, CA 94108  
tel (415) 956-1360  
4 fax (415) 276-1738  
rhoyer@hoyerlaw.com  
5 dlipps@hoyerlaw.com

6 Attorneys for Plaintiff  
AARON PALM

7  
8 GIBSON, DUNN & CRUTCHER LLP  
MICHELE L. MARYOTT (SBN 191993)  
9 MMaryott@gibsondunn.com  
LYNN HANG (SBN 245576)  
10 LHang@gibsondunn.com  
3161 Michelson Drive  
11 Irvine, CA 92612-4412  
Telephone: (949) 451-3800  
12 Facsimile: (949) 451-4220

13 Attorneys for Defendant,  
SUR LA TABLE, INC.

14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 AARON PALM, on behalf of himself and all  
18 others similarly situated,

Case No. 12-cv-01250-JCS

19 Plaintiffs,

STIPULATION TO FILE FIRST  
AMENDED COMPLAINT

20 vs.

21 SUR LA TABLE, INC., a Corporation, and  
DOES 1-25

22 Defendants,

23  
24 STIPULATION TO FILE FIRST AMENDED COMPLAINT

1       1. WHEREAS, on February 10, 2012 Plaintiff AARON PALM notified by certified mail  
2 the California Labor and Workforce Development Agency ("LWDA") and Defendant SUR LA  
3 TABLE, INC. of his intent to amend his complaint to add a cause of action for civil penalties  
4 and attorney's fees pursuant to the California Private Attorneys General Act ("PAGA"), Cal.  
5 Labor Code § 2698 *et seq.*, identifying the specific provisions of the Labor Code alleged to  
6 have been violated including the facts and theories supporting the alleged violations;

7       2. WHEREAS, Plaintiff asserts that the LWDA has not provided notice to Plaintiff of its  
8 intent to investigate the alleged violations within thirty-three days of Plaintiffs' notice;

9       3. WHEREAS, pursuant to Cal. Labor Code §2699.3(a)(2)(C), "a plaintiff may as a  
10 matter of right amend an existing complaint to add a cause of action" for PAGA penalties  
11 within sixty days of the LWDA's thirty-three day deadline;

12       4. WHEREAS, federal courts have held that section 2699.3(a)(2)(C) directly conflicts  
13 with the Federal Rules of Civil Procedure regarding amendment (see, e.g. *De Simas v. Big*  
14 *Lots Stores, Inc.* (N.D. Cal.) 2007 WL 686638), so the Federal Rules govern;

15       5. WHEREAS, Fed. R. Civ. Proc. 15(a)(2) provides that a party may amend its pleading  
16 with the opposing party's written consent or with the court's leave, and courts shall freely  
17 grant leave to file amended complaints, when justice so requires;

18       6. WHEREAS, Plaintiff provided to Defendant a copy of the proposed First Amended  
19 Complaint, attached hereto as Exhibit 1, and Defendant has agreed to stipulate to its filing;

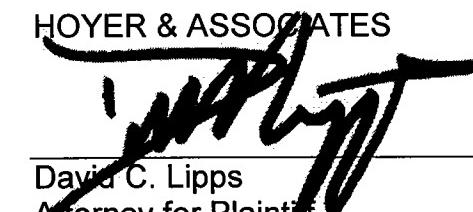
20       7. THEREFORE, THE PARTIES STIPULATE THAT Plaintiff may file the proposed First  
21 Amended Complaint. The parties understand and agree that Defendant's stipulation does  
22 not constitute an admission or acknowledgement as to the truth or validity of the claims  
23 alleged in the First Amended Complaint.

1       8. THE PARTIES FURTHER STIPULATE THAT Defendant waives notice and service  
2 of the amended complaint and shall not be required to answer the amendment. In the  
3 event Defendant chooses not to respond to the amended complaint, all denials, responses,  
4 and affirmative defenses contained in the answer filed by Defendant to the original  
5 complaint shall be responsive to the amended complaint. However, in the event Defendant  
6 chooses to respond to the amended complaint, Defendant shall have 21 days after service  
7 of the amended complaint to answer or otherwise respond to Plaintiff's amended complaint.  
8 N.D. Cal. L.R. 6-1(a).

9

10 Date: March 20, 2012

HOYER & ASSOCIATES

11   
12 David C. Lipps  
13 Attorney for Plaintiff  
AARON PALM

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15 Date: 3/23/12

GIBSON, DUNN & CRUTCHER LLP

16   
17 Michele L. Maryott  
18 Lynn Hang  
19 Attorneys for Defendant  
20 SUR LA TABLE, INC.

21 Dated: March 28, 2012



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